

Appl. No. 10/764,215
Docket No. P142M
Amdt. dated February 28, 2008
Reply to Office Action mailed on November 29, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1 – 17 are pending in the present application. No additional claims fee is believed to be due. Claims 10 – 17 have been withdrawn as a result of an earlier restriction requirement. Claims 2 and 3 have been rejected under 35 U.S.C. § 112 and claims 1 – 9 have been rejected under 35 U.S.C. § 102. Claims 1 and 2 have been amended. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 2 and 3 have been rejected under 35 U.S.C. § 112, second paragraph. Claim 3 is dependent upon claim 2. The Office Action states that the “phrase ‘less than about’ fails to set forth a lower limit for the concentration of the agent. Such phrase covers 0% of the agent in the composition.” Applicants respectfully traverse this rejection. In an effort to advance prosecution, however, Claim 2 has been amended. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Oliveira

Claims 1 – 9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Oliveira et al. (US Publication No. 2003/0157239)(“Oliveira”). Applicants respectfully traverse this rejection.

Oliveira discloses that a:

High protein, low soluble-sugar, oil containing soybean meal suitable for use as a partial or full replacement of fish meal and other protein and energy sources in the manufacture of fish and land animal feeds and petfoods, is produced by a process in which oil is mechanically extracted from dehulled, flaked soybeans.

Abstract. Oliveira, however, fails to teach each and every element of the claims.

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Claim 1, as amended, is directed to, *inter alia*, a composition comprising astaxanthin wherein the composition is adapted for use by a companion animal and wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira discloses that the “*soybean meal* of this invention also is useful as a protein and energy source in other manufactured animal feeds, particularly for carnivores and omnivores, for example, shrimp, piglets, calves and pet animals (for example, cats and dogs).” Para [0040](emphasis added). Thus, as best understood by Applicants, it is the *soybean meal* of Oliveira that may be fed to dogs and cats. Examples of compositions comprising soybean meal and astaxanthin were fed to Atlantic Salmon. Example 2 of Oliveira. As best understood by Applicants, while Oliveira may disclose that the soybean meal may be fed to dogs and cats, the only disclosure with regards to a composition comprising astaxanthin is a composition fed to fish. As best understood by Applicants, therefore, Oliveira fails to teach a composition comprising astaxanthin, wherein the composition is adapted for use by a companion animal wherein the companion animal is selected from the group consisting of dogs and cats. Oliveira, therefore, fails to anticipate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: February 28, 2008
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